

TOWN OF COTTESLOE



FULL COUNCIL MEETING MINUTES

**SPECIAL MEETING OF COUNCIL
HELD IN THE
Council Chambers, Cottesloe Civic Centre
109 Broome Street, Cottesloe
7.00 PM, Tuesday, 15 May, 2012**

17 May 2012

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1 DECLARATION OF MEETING OPENING/ANNOUNCEMENT OF VISITORS

The Mayor announced the meeting opened at 7:05 PM.

**2 RECORD OF ATTENDANCE/APOLOGIES/LEAVE OF ABSENCE
(PREVIOUSLY APPROVED)****Elected Members**

Mayor Kevin Morgan	Presiding Member
Cr Jack Walsh	
Cr Greg Boland	
Cr Katrina Downes	
Cr Yvonne Hart	
Cr Sally Pyvis	
Cr Rob Rowell	
Cr Victor Strzina	
Cr Peter Jeanes	

Officers

Mr Carl Askew	Chief Executive Officer
Mr Mat Humfrey	Manager Corporate & Community Services
Mr Andrew Jackson	Manager Development Services
Mrs Lydia Giles	Executive Officer

Apologies

Nil

Officer Apologies

Mr Geoff Trigg	Manager Engineering Services
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Leave of Absence (previously approved)

Nil

3 RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE

Nil

4 PUBLIC QUESTION TIME

Nil

5 PUBLIC STATEMENT TIME

Mr Paul Wilkes, 46 Griver Street, Cottesloe. Re. Item 9.1.1 – Local Planning Scheme No. 3 – Status Report on Minister’s Decision as to final Approval.

Mr Wilkes noted with total dismay and condemns the actions of Premier Barnett, Minister Day and the WAPC, with regard to the foreshore issues in the new TPS3 – Town Planning Scheme. Instead of working constructively with Cottesloe Council and the local community, they have chosen to totally disregard the extensive positive work of Council, Consultants and community, by imposing their designs on the Cottesloe foreshore without meeting with us or explaining their actions. Furthermore by bringing in Design Assessment Panels they seek to change the rules by which decisions are made.

The Enquiry by Design process was very positive and brought in considerable expertise including senior staff from the Department of Planning and Infrastructure (DPI). Our local member chose not to attend any of this process.

Mr Wilkes strongly support Council in considering legal action to oppose the current actions of the State Government in this matter and looks forward to the next State election when he will have the opportunity to elect a new local member who will work with their constituents rather than against.

Ms Madeline Nicholson, 15 Grainger Drive, Mt Claremont. Re. Item 9.1.1 – Local Planning Scheme No. 3 – Status Report on Minister’s Decision as to final Approval.

Ms Nicholson thanked the Council for the opportunity to address her view on Cottesloe development. She stated that she has lived in Mt Claremont for 30 years or so and has been an active representative of the local Community, President of the Mt Claremont Resident Association and a City of Nedlands’ Councillor. She stated that Colin Barnett has been asked on many occasions to support his electorate’s wishes regarding the development of the old Swanbourne Hospital building site. Over the years his response has at times promised much, but never delivered. This site was sold to a developer who has reduced it to a shambolic condition and who would now like the State Government to bail him out.

Mr Barnett has demonstrated a complete lack of respect for the Nedlands electorate’s wishes of those who elect him.

Ms Nicholson’s expressed that her presence tonight is to ask Cottesloe Council and residents not to give up their ‘right’ to determine what is best for them in their own backyard. Cottesloe is shared by many people who are visitors. They do not pay any rates here to support the amenities. Residents however have to put up with the detrimental aspects of drunkenness and vandalism. The final straw is that the State Government is endeavouring to over rule local opinion on matters of planning its own beach front. A community needs to be firmly held by its grass root and those roots are the local Councillors. We have seen the disastrous ugly development of

Scarborough beach and Leighton beach. Ms Nicholson asked the Council to fight to retain our Town Planning Scheme. Ms Nicholson asked to join with other Councils who are facing confrontation with the State Government.

Ms Patricia Carmichael, 14/116 Marine Parade, Cottesloe. Re. Late Item Metropolitan Local Government Review – Draft Findings – May 2012.

I refer to the late item from the CEO in relation to Local Government Reform and Council's submission to the Robson Panel and its Key Findings. The report represents a draft hypothesis which purports improved outcomes for the community but provides no evidence and lacks substance and credibility. The community's view is not being taken into account and the Panel has not learnt from past experiences and mistakes especially within the larger Councils. The Panel has not taken into account the need for broad community support and the importance of local identity and place. The State is redefining local government and the Metropolitan Local Government Review has been set up to justify a State imposed solution that will remove democracy from local communities.

Mr Chris Wiggins, 50 John Street, Cottesloe. Re. Item 9.1.1 – Local Planning Scheme No. 3 – Status Report on Minister's Decision as to final Approval.

It looks as if the Minister has ignored public opinion and planning advice, and dictated height limits which we will have to live with. It is regrettable that we could not come up with a solution whereby height bonuses are only granted after the developer has come up with a compelling design. Council must consider the final wording of LPS3 very carefully. You only have one chance. Council must bear in mind that developers have an obligation to their shareholders to maximise profits. This is their business. I was formerly a project manager on large construction contracts, and taking full advantage of contracts to maximise profits was my job. Just as developers maximise profits to shareholders, it is Council's responsibility to maximise benefits to ratepayers and the public.

Key aspects that need to be considered include quality. The public expect a high quality architecture appearance. Buildings should be innovative and have character. We must not let Cottesloe become a bland waterfront like Scarborough, Leighton and South beach. A controversial development is better than a faceless one.

Consider balconies carefully. Developers will attempt to build full width balconies projecting the full width of the setback. I suggest that they be limited to 60% of building width and 50% of setback. Given the big height bonuses, there should be public open spaces in the form of courtyards and alleyways which will break up the bulks and provide alfresco spaces.

Amenities - Developers do not willingly include restaurants or bars in their building as these will reduce attractiveness to up market purchasers who do not want smell, noise, bottles dumped at midnight etc. This talk of vibrancy is developer speak. It's the last thing they want. What modern up market

residential building in Perth has significant bars and restaurants? Specify that 50% of frontage be food and beverage.

The developers should also make substantial contributions to public works on the beach. They do in virtually all other jurisdictions around the world. You need plenty of time to do this. There should be no big rush given the economy. You will need advice from experienced professional to achieve this. I don't see that anyone can object to this, other than the developers.

You should regard this as an opportunity to maintain Cottesloe as an attractive notable and different place for residents and visitors.

6 APPLICATIONS FOR LEAVE OF ABSENCE

Nil

7 ANNOUNCEMENTS BY PRESIDING MEMBER WITHOUT DISCUSSION

Tonight this Council must determine where to from here in terms of our draft LPS 3. Do we resign ourselves to this corruption of the planning process or do we shine a spotlight on the tawdry political antics that led to this.

Those who advocate greater than 3 storeys other than at the OBH and CBH have yet to explain what if any benefit they perceive will be gained by the extra storeys and as to why that benefit exceeds the loss to be suffered by those who wish to retain low-rise

They criticized the EbD without providing any rationale for doing so. To begin with they asserted that the extra storeys were needed to rid our beachfront of beer barns, which was later shown to be nonsense given that there is nothing in the planning regime to stop similar sized bars being established in any new high-rise building, and in the end the Council's approach to using liquor licensing laws to tackle this problem has already rid us of the worst of this problem.

They then lamely argued that without the extra height redevelopments would not occur, until this was also hit for a six by the EbD where despite being given the opportunity to do so the developers were unable to rebut the evidence to the contrary.

Next they fantasied that the extra height would magically translate into better building designs despite there being no mechanism to translate extra height into better designs.

Even the Minister and Premier have fabricated that a supposed justification for the extra height is that it will somehow deliver better ground floor public facilities such as bars and cafes despite privately conceding that the extra height will not deliver any better facilities than would have been delivered under the EbD low-rise plan.

With 500 spin doctors at their disposal I sympathize with the gullible souls who fell for this rubbish, but I have no sympathy for those who knew better but were used as a mouthpiece to do their bidding and to bring the community's position into disrepute.

Without them playing this role of Trojan horses the Barnett Government and their cronies would not have got where they have in terms of overriding the EbD height limits.

Yes, many are being swept along by the corporate cronyism that masquerades as party politics in this State, and some are more than happy to fall into line simply to conform and feel in with the in crowd.

The option to legally challenge the Minister's modifications is not without its risks, including the risk that the Minister may change the State's Coastal Planning Policy to belatedly legitimize his otherwise ultra vires intervention to date, but to do so would at very least expose his behavior as illegal.

Coupled with this is the need for this Council to decide tonight on its response to the Robson Review to reduce the number of councils in the metropolitan area. I note that this Review does not rule out the establishment of a metropolitan-wide authority focusing on city-wide planning and integration to co-exist with the current local government structure, along the lines of similar bodies in London and Vancouver. We should give serious consideration to pursuing that path rather than do nothing other than advocate the status quo.

In closing, the Mayor thanked Mr Andrew Jackson for his enormous efforts over many years in providing advice and support to Council in relation to this matter

7.1 SUSPENSION OF STANDING ORDER 12.1 – MEMBERS TO RISE

BACKGROUND

At the September 2006 meeting of Council it was agreed that the suspension of Standing Order 12.1 be listed as a standard agenda item for each Council and Committee meeting.

Standing Orders 12.1 and 21.5 read as follows:

Members to Rise

Every member of the council wishing to speak shall indicate by show of hands or other method agreed upon by the council. When invited by the mayor to speak, members shall rise and address the council through the mayor, provided that any member of the council unable conveniently to stand by reason of sickness or disability shall be permitted to sit while speaking.

Suspension of Standing Orders

- (a) The mover of a motion to suspend any standing order or orders shall state the clause or clauses of the standing order or orders to be suspended.

- (b) A motion to suspend, temporarily, any one or more of the standing orders regulating the proceedings and business of the council must be seconded, but the motion need not be presented in writing.

COUNCIL RESOLUTION:

Moved Cr Strzina, seconded Mayor Boland

That Council suspend the operation of Standing Order 12.1 which requires members of Council to rise when invited by the Mayor to speak.

Carried 9/0

8 PETITIONS/DEPUTATIONS/PRESENTATIONS

Nil

9 REPORTS OF OFFICERS**9.1 MANAGER DEVELOPMENT SERVICES****9.1.1 LOCAL PLANNING SCHEME NO. 3 – STATUS REPORT ON MINISTER'S
DECISION AS TO FINAL APPROVAL**

File No: SUB/443
Responsible Officer: Carl Askew
Chief Executive Officer
Author: Andrew Jackson
Manager Development Services

Proposed Meeting Date: 15 May 2012
Author Disclosure of Interest: Nil

INTRODUCTION

This report briefs Council on progress towards the finalisation of LPS3, which was lodged with submissions and supplementary documentation at the end of September 2011. The Scheme has been under assessment by the State agencies for the ensuing six and a half months.

A letter from the WAPC received on 19 April 2012 advised that the Minister has decided to withhold final approval of the Scheme until it is modified to his satisfaction.

The Minister determined the nearly 1900 public submissions commenting on his originally-proposed major modifications by upholding those in support of the current modifications and dismissing those containing objections. The Minister also ruled that the further changes to the modifications he now seeks are deemed to be insubstantial therefore do not warrant additional advertising.

The WAPC has endorsed the Local Planning Strategy related to the Scheme, subject to modifications that concur with the Minister's decision.

It is noted that the WAPC's findings and Minister's decision on the Scheme come after Council lodged a considerable amount of material and detailed information with the Department of Planning for assessment and reporting. This was reinforced by presentations on the Scheme to the Department's officers, WAPC, Minister and Premier/Member for Cottesloe, emphasising Council's compromise Beachfront Development Solution plus the associated Foreshore Redevelopment Plan adopted by Council.

The State agencies chose to not enter into any meaningful dialogue with the Town or Council on the matter and the Department's officers seemed reluctant to discuss the key issues and expressed being under pressure to expedite processing of a backlog of planning schemes and amendments.

STATUTORY PROCEDURE

Under the regulations the Town's task is to prepare the modified Scheme documents then submit them for the Minister's final approval and gazettal, whence the Scheme becomes operative.

A period of 42 days is provided for this which ends on 31 May 2012 and officers have commenced that activity.

In parallel, the Local Planning Strategy is required to be modified for ratification by the WAPC.

Given these imperatives a special meeting has been convened for Council to be briefed on and consider the matter as soon as possible.

SUMMARY OF KEY CHANGES

Although the Final Schedule of Modifications is similar to the first version, with the same basic format and content, it contains various substantial revisions, which are summarised below.

Fundamentally, for building heights along the beachfront the final modifications impose the following: OBH site six and eight storeys; Lido site six storeys; CBH site, Seapines site and Foreshore Centre Zone all five storeys. Setbacks have been generally reduced in conjunction with these decreed height increases.

In the related Special Control Area 2 provisions, the original development criteria of avoiding adverse building bulk, overshadowing and streetscape character impacts, which were stipulated by the previous Minister as appropriate planning measures, have been deleted, without explanation.

The prescription for short-stay accommodation rooms has been rationalised and the parking provisions simplified for developers.

At the OBH site, the Building Control Diagrams no longer include the 16m separation spaces to ameliorate building bulk by creating six dispersed towers above the three-storey podium. This means that a building mass six to eight storeys high running the full depth of the site would occupy both sides of the central laneway. Furthermore, the land usage arrangement has been homogenised, enabling commercial and entertainment uses to be spread throughout the site, above the ground floor and closer to surrounding residences – with consequential anticipated impacts.

At the CBH site, the short-stay accommodation and private residential land usage arrangement behind the heritage hotel has likewise been homogenised, with the Transition Area deleted and the requirement for conservation relaxed.

Elsewhere other building height controls have been relaxed, including being removed altogether from the Development Zones and subject to structure planning instead; easing the formula for calculating site levels; and granting a storey bonus for future redevelopment of existing non-conforming residential complexes.

ADDITIONAL ERRORS & OMISSIONS

The Minister has authorised that the Department's officers liaise with the Town to sort-out any minor refinements in implementing the modifications. To date a number of technical discrepancies in the modifications supplied have been identified by the Town for clarification by the Department.

Beyond that, the Town has discovered that there appears to be major flaws affecting part of the beachfront area in terms of the interrelated provisions for zoning, development requirements and building controls which must be rectified. Moreover, these significant inconsistencies constitute substantial amendments that are essential to render the Scheme workable. This is particularly so given the uncertainty as to zoning, which directly affects permitted land uses, applicable planning provisions and development potential by virtue of the controls for building height and form. Unless clarified and corrected, the owners won't know how their land is able to be used or developed, the community won't have a clear expectation of what may occur and the Town won't be able to advise any party or process any proposals for the subject area.

Hence it is the officer's opinion that the apparent errors warrants re-advertising of at least those aspects, in order to notify landowners and the public, allowing for submissions to be made and considered in the normal manner. Otherwise there would be a denial of due process and procedural fairness in the formulation and finalisation of the Scheme.

The Town has already brought this important matter to the Department's attention in detail. However, the responsible officer on the Scheme for the past few years (the second main officer involved) has left the Department following the Minister's decision. At this stage the Department has indicated that it will take some time to examine the anomalies and respond.

This unfortunate situation echoes the previous serious errors and omissions the Town found in the original suite of proposed major modifications, which resulted in additional advertising to ensure that those aspects were properly disseminated and evaluated. The current errors are considered to have an even greater degree of significance.

Addressing these mistakes is likely to complicate the steps and extend the timeframe necessary to complete the Scheme.

REPORT TO WAPC & MINISTER

As reported to Council in the case of the initial modifications, consideration of the proposed Scheme by the Department, WAPC and Minister appears to have collectively ignored the direction suggested by the Town's planning justification and the public submissions.

In the case of the intended final modifications, it is apparent that the State authorities' recent deliberations reflect this earlier view, in that they have:

- Dismissed the volume and weight of objections in the submissions; rejecting the Town's assessment and legal submission accordingly; despite using that content in reporting.
- Dismissed the Beachfront Development Solution evolved by Council, on the premise of not satisfying the WAPC's policies and objectives; rejecting the height and built form parameters generated by the Town and community.
- Rejected the Town's legal submission on the influence of SPP2.6 (State Coastal Planning Policy), on the presumption that the WAPC and Minister may interpret regional strategy and policy as they see fit; without any specificity.
- Dismissed the joint EbD findings and re-written the provisions; defending the Department's in-house studies as having overtaken the EbD. Further modifications have been introduced, but without engaging the Town, community or wider public.
- Claimed that redevelopment with increased height will improve the character and amenity of the beachfront – it is known that the WAPC and Minister overrode the five-storey maximum previously recommended by the Department.
- Claimed that solar access, views, shadow and wind impacts would not be undue and are plausible trade-offs against the perceived benefits of development; which are biased towards development-potential rather than being suitably amenity-based.
- Claimed parking reduction and traffic generation are not problematic; yet that *aspect* has not been studied or quantified.
- Not listened to Council or the community but have followed the wishes of the beachfront landowners/developers and their consultants. It is clear that the WAPC and Minister have responded to input from the landowners' architects founded on construction efficiency and costs, design flexibility and increased floor-space irrespective of relevant planning considerations.

It can be seen that the State bodies, in their deliberations to determine the submissions and Council's response on the whole of the Scheme, have adhered to their earlier outlook and not been persuaded by planning argument, public comment, legal scrutiny or expert consultants in deciding upon final modifications. Indeed, further modifications have been mandated and directed in the absence of any discussion with the Town, despite the Council deputations, which had side-stepping the natural expectation (and legislated right) of prior public consultation for participation in the intended additional changes.

LEGAL PERSPECTIVE

In these circumstances, it is seen as legitimate that Council may elect to investigate legal questions or options regarding the statutory and decision-making process, as well as explore possible courses of action, in the interests of a credible Scheme outcome.

For example, such concerns could entail whether: sufficient and accurate material has informed the deliberations by the WAPC and Minister; the submissions have been adequately assessed and appropriately dealt with; major changes have failed to be distinguished as substantial modifications deserving additional advertising; due regard has been properly applied to SPP2.6 and all pertinent considerations; universal planning principles have been compromised and determinations made on non-planning grounds; and so on.

Nonetheless, it would be prudent that Council contemplate the probabilities and implications of pursuing any legal recourse, bearing in mind factors including timing, costs and uncertainty.

Scope for legal review so far identified includes, *inter alia*: the approach to the Scheme by the State authorities; contentions about the planning substance of their deliberations and determinations; the excessive effects of the modifications for the beachfront; limitation of building heights in perpetuity; and the need for comprehensive planning, development control policies and urban design guidelines to guarantee a high standard of built form, public domain improvements and the preservation of amenity.

CONCLUSION

The way in which the WAPC and Minister have determined the intended final modifications for incorporation into the Scheme is obviously at odds with Council's proposals for the district in general and the beachfront precinct especially. It appears difficult for Council to accept that the merits and strengths of the large volume of submissions in objection have been treated with justice. Neither does it appear evident that Council's underlying planning rationale and well-conceived Beachfront Development Solution have been conscientiously taken into account.

Apart from these vital planning and process concerns, the Town's costs to produce the Scheme throughout several years – funded by rates revenue derived from the community – tallies in the hundreds of thousands of dollars. This has comprised various studies, several consultation phases, the joint Enquiry by Design exercise with the Department and WAPC, a range of planning and legal consultants, and all associated expenditure. That all this time, effort (by officers, consultants, Elected Members and the community), resources and costs consumed by the Town to devise and deliver the Scheme be set aside would now be considered an exorbitant waste to Council in discharging its statutory planning duties.

In light of the above it is recommended as follows.

VOTING

Simple majority

OFFICER RECOMMENDATION

Moved Mayor Morgan, seconded Cr Hart

That Council:

1. Notes this status report concerning the Minister's latest decision as to finalisation of LPS3.
2. Records its disappointment and dissatisfaction at the manner in which the determination appears to have been reached, including the degree of departure from the Scheme solutions put forward by Council, as well as the further departure from the originally-proposed and advertised modifications without additional consultation.

3. Considers legal advice regarding the validity of the deliberations by the WAPC and Minister in the matter and the opportunities for recourse in order to achieve the correct Scheme outcome, and gives instructions to staff and the Town's solicitors in pursuing any desired course of action.
4. Requests that staff write immediately to the WAPC and Minister informing them of the apparent serious flaws in the intended final modifications affecting some beachfront properties and the need for further advertising due to the substantial additional modifications, and seeking confirmation of the extra steps and time required for completion of the overall Scheme accordingly.

AMENDMENT

Moved Mayor Morgan, seconded Cr Walsh

That a new point 5 be added to the recommendation to read:

Instructs the Town's solicitors and officers to instigate proceedings towards a judicial review of the decision by the Minister for Planning on the final modifications required to Local Planning Scheme No. 3, with particular respect to the Cottesloe beachfront and Statement of Planning Policy 2.6: State Coastal Planning Policy, in relation to those sites exceeding Council's adopted Beachfront Development Solution and the five-storey height limit contained in the Policy.

Carried 6/3

**For: Mayor Morgan, Crs Walsh, Pyvis, Strzina, Boland, Hart
Against: Crs Downes, Jeanes and Rowell**

AMENDMENT

Moved Mayor Morgan, seconded Cr Downes

That a new point 6 be added to the recommendation to read:

Authorises the Mayor to write to the Minister for Planning and to the Premier of Western Australia and Member for Cottesloe requesting that the Central Foreshore maximum height limit, as determined by the Minister's modifications or any lesser maximum heights as may in the future result from the Council's legal challenge to the Minister's modifications, be enshrined in legislation so that they cannot in the future be increased without the support of both houses of State Parliament.

Carried 8/1

**For: Mayor Morgan, Crs Walsh, Pyvis, Strzina, Boland, Hart, Downes, and
Jeanes
Against: Cr Rowell**

AMENDMENT

Moved Cr Walsh, seconded Mayor Morgan

That a new point 7 be added to the recommendation to read:

Checks the likelihood of recovering in a civil action the costs of the EbD incurred by the Town of Cottesloe.

Carried 7/2

**For: Mayor Morgan, Crs Walsh, Pyvis, Strzina, Boland, Hart, Downes
Against: Crs Jeanes and Rowell**

In considering the Amended Substantive Motion the Mayor dealt with items 1, 2 and 4 first, followed by items 3 and 5, then 6 and 7 with all votes to be recorded.

That Council:

- 1. Notes this status report concerning the Minister's latest decision as to finalisation of LPS3.**
- 2. Records its disappointment and dissatisfaction at the manner in which the determination appears to have been reached, including the degree of departure from the Scheme solutions put forward by Council, as well as the further departure from the originally-proposed and advertised modifications without additional consultation.**
- 4. Requests that staff write immediately to the WAPC and Minister informing them of the apparent serious flaws in the intended final modifications affecting some beachfront properties and the need for further advertising due to the substantial additional modifications, and seeking confirmation of the extra steps and time required for completion of the overall Scheme accordingly.**

THE AMENDED SUBSTANTIVE MOTION WAS PUT

Carried 9/0

That Council:

- 3. Considers legal advice regarding the validity of the deliberations by the WAPC and Minister in the matter and the opportunities for recourse in order to achieve the correct Scheme outcome, and gives instructions to staff and the Town's solicitors in pursuing any desired course of action.**
- 5. Instructs the Town's solicitors and officers to instigate proceedings towards a judicial review of the decision by the Minister for Planning on the final modifications required to Local Planning Scheme No. 3, with particular respect to the Cottesloe beachfront and Statement of Planning Policy 2.6: State Coastal Planning Policy, in relation to those sites**

exceeding Council's adopted Beachfront Development Solution and the five-storey height limit contained in the Policy.

THE AMENDED SUBSTANTIVE MOTION WAS PUT

Carried 6/3

**For: Mayor Morgan, Crs Walsh, Pyvis, Strzina, Boland, Hart
Against: Crs Downes, Jeanes and Rowell**

That Council:

6. Authorises the Mayor to write to the Minister for Planning and to the Premier of Western Australia and Member for Cottesloe requesting that the Central Foreshore maximum height limit, as determine by the Minister's modifications or any lesser maximum heights as may in the future result from the Council's legal challenge to the Minister's modifications, be enshrined in legislation so that they cannot in the future be increased without the support of both houses of State Parliament.

THE AMENDED SUBSTANTIVE MOTION WAS PUT

Carried 8/1

**For: Mayor Morgan, Crs Walsh, Pyvis, Strzina, Boland, Hart, Downes, and
Jeanes
Against: Cr Rowell**

That Council:

7. Checks the likelihood of recovering in a civil action the costs of the EbD incurred by the Town of Cottesloe.

THE AMENDED SUBSTANTIVE MOTION WAS PUT

Carried 7/2

**For: Mayor Morgan, Crs Walsh, Pyvis, Strzina, Boland, Hart, Downes
Against: Crs Jeanes and Rowell**

COUNCIL RESOLUTION

That Council:

1. Notes this status report concerning the Minister's latest decision as to finalisation of LPS3.
2. Records its disappointment and dissatisfaction at the manner in which the determination appears to have been reached, including the degree of departure from the Scheme solutions put forward by Council, as well as the further departure from the originally-proposed and advertised modifications without additional consultation.
3. Considers legal advice regarding the validity of the deliberations by the WAPC and Minister in the matter and the opportunities for recourse in

order to achieve the correct Scheme outcome, and gives instructions to staff and the Town's solicitors in pursuing any desired course of action.

4. Requests that staff write immediately to the WAPC and Minister informing them of the apparent serious flaws in the intended final modifications affecting some beachfront properties and the need for further advertising due to the substantial additional modifications, and seeking confirmation of the extra steps and time required for completion of the overall Scheme accordingly.
5. Instructs the Town's solicitors and officers to instigate proceedings towards a judicial review of the decision by the Minister for Planning on the final modifications required to Local Planning Scheme No. 3, with particular respect to the Cottesloe beachfront and Statement of Planning Policy 2.6: State Coastal Planning Policy, in relation to those sites exceeding Council's adopted Beachfront Development Solution and the five-storey height limit contained in the Policy.
- 6 Authorises the Mayor to write to the Minister for Planning and to the Premier of Western Australia and Member for Cottesloe requesting that the Central Foreshore maximum height limit, as determine by the Minister's modifications or any lesser maximum heights as may in the future result from the Council's legal challenge to the Minister's modifications, be enshrined in legislation so that they cannot in the future be increased without the support of both houses of State Parliament.
7. Checks the likelihood of recovering in a civil action the costs of the EbD incurred by the Town of Cottesloe.

9.2 MANAGER CORPORATE SERVICES**9.2.1 APPROVAL OF 2012/13 DIFFERENTIAL RATES FOR ADVERTISING**

File No: SUB/1368
Attachments: [Differential Rating Policy](#)
Responsible Officer: Carl Askew
Chief Executive Officer
Author: Mat Humfrey
Manager Corporate Services

Proposed Meeting Date: 15 May 2012
Author Disclosure of Interest Nil

SUMMARY

As part of the preparation of the 2012/2013 budget, the Town is required to advertise its intention to raise a differential rate. Council is being asked to consider authorising the CEO to advertise the proposed differential rate included in the draft budget.

BACKGROUND

Until recently the Town has charged a flat rate. With the advent of Procott, the Town began charging a specified area rate, with the funds raised forwarded to Procott to assist with the development of the Town Centre. When the 2011/12 budget was being prepared, it came to the Town's knowledge that it was not appropriate to use a specified area rate to raise funds for general activities and that a differential rate was more appropriate.

As well as requiring the advertising of the rates, the Act also requires that the objects and reasons for each rate to also be advertised. As there is no change in the differential rating policy, nor the purpose of the differential rates, there are no proposed changes from the 2011/2012 statements.

The Town of Cottesloe's objects and reasons for rating are:

Land zoned Town Centre Zone under the Town of Cottesloe's TPS 2 and which is used for commercial purposes:

These rates are set with a premium to cover the costs of Council's funding for Procott

All other properties in the Town of Cottesloe:

Rates on all other properties are levied at the same rate to reflect the fact that these land types make the same relative contribution.

STRATEGIC IMPLICATIONS

Nil

POLICY IMPLICATIONS

Differential Rating Policy (attached)

STATUTORY ENVIRONMENT

Local Government Act 1995 s6.33 – differential rates

Local Government Act 1995 s6.2 – Local Government to prepare annual budget

In summary, the Town must conduct local advertising and detail each rate and minimum rate, as well as making available the objects and reasons for each type of rate. A minimum of 21 days must be allowed for the community to provide feedback. Any submission received must be considered when adopting the rates as a part of the budget.

FINANCIAL IMPLICATIONS

Nil

SUSTAINABILITY IMPLICATIONS

Nil

CONSULTATION

The Town will undertake the required 21 day advertising period. Procott have provided a request for increased funding as detailed below.

STAFF COMMENT

The Town is required to advertise its intention to raise differential rates. As a part of this advertising a rate in the dollar and minimum must also be advertised. However the Council is not able to adopt its final rate in the dollar until the advertising period is closed and the bottom line of the budget is known. As such there is some flexibility in adjusting the rate in the dollar from what is advertised and what is adopted. While the Act does not provide specific guidelines on a maximum variation, small changes have been permitted in the past, as long as the overall rating structure is maintained.

At this initial stage, the rate modelling has been conducted and from this, the differential rate and general rate have been calculated.

Public advertising will take place through an advertisement in local papers, Council's website and a notice on all Council notice boards.

VOTING

Simple Majority

OFFICER RECOMMENDATION & COUNCIL RESOLUTION

Moved Mayor Morgan, seconded Cr Strzina

THAT Council

1. Approves the following rates in the dollar and Objects and Reasons for differential rating in 2012/13 for the purposes of advertising for public submissions:

	Minimum Rate	Rate in \$
Town Centre Zone	\$942.00	0.073188
General	\$942.00	0.062414

Objects and Reasons for Differential Rating

Town Centre Zone Land Zoned Town Centre Zone under the Town of Cottesloe's Town Planning Scheme Number 2 and which is used for commercial purposes.	These rates are set with a premium to cover the cost of Council's funding for ProCott
General Land not zoned Town Centre Zone under the Town of Cottesloe's Town Planning Scheme Number 2 Land zoned Town Centre Zone under the Town of Cottesloe's Town Planning Scheme Number 2 and which is used for non-commercial purposes	Rates on all other properties are levied at the same rate to reflect the fact that these types make the same relative contribution.

2. Requests the Chief Executive Officer to advertise for a minimum of 21 days in accordance with the Local Government Act with the objective of providing information to the community regarding the issues and factors which contribute to the proposed rates in the dollar.
3. Receive a further report on this matter after the closure of the public advertising period.

Carried 9/0

10 ELECTED MEMBERS' MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN

Nil

11 NEW BUSINESS OF AN URGENT NATURE INTRODUCED BY ELECTED MEMBERS/OFFICERS BY DECISION OF MEETING

The following late item was tabled by the Chief Executive Officer and requested to be considered as an item of urgent business due to the need for Council to prepare a submission to the Metropolitan Local Government Review Panel and provide feedback to WALGA by 25 May 2012.

Moved Mayor Morgan, seconded Cr Strzina

That the Metropolitan Local Government Review – Draft Findings - May 2012 report be considered as Urgent Business.

Carried 9/0

The Chief Executive Officer declared an interest as the report author. The Mayor raised the matter with Council expressing the view that in the event of an amalgamation, all staff and elected members would have an interest and potentially be affected. However Council was not considering the issue of amalgamation at this time but rather a response to a draft paper and so the declared interest was not considered substantial.

Moved Mayor Morgan, seconded Cr Hart

That the Chief Executive Officer be allowed to remain in the Chamber during consideration of the officer report.

Carried 9/0

11.1 CHIEF EXECUTIVE OFFICER**11.1.1 METROPOLITAN LOCAL GOVERNMENT REVIEW - DRAFT FINDINGS-
MAY 2012**

File No: SUB/793-02
Attachments: [Metropolitan Local Government Review Panel Draft Findings April 2012 \(Previously circulated\)](#)
[Draft WALGA Responses \(Previously circulated\)](#)
Responsible Officer: Carl Askew
Chief Executive Officer
Author: Carl Askew
Chief Executive Officer
Proposed Meeting Date: 15 May 2012
Author Disclosure of Interest: The author has an interest in the matter as any potential amalgamation would directly relate to his employment

SUMMARY

In June 2011 the Minister for Local Government announced a review of local government boundaries in the Perth metropolitan area and appointed a high level independent Panel to examine the social, economic and environmental challenges facing Perth.

The Metropolitan Local Government Review Panel (Robson Panel) have recently produced a *Draft Findings* report which is intended to be an indication of the Panel's thoughts on the future of local government in metropolitan Perth and, the Report says, should be viewed as a progress report, not a final position. However it is anticipated that the final report will reflect of the findings.

Submissions on the Panel's Draft Findings are required by 25 May 2012.

In addition, WALGA is preparing a response to the Draft Findings and has issued an indicative response and sought feedback from the sector in preparation for a meeting of metropolitan Mayors on 22 May 2012, after which the response will be finalised.

This report recommends that Council authorise the Mayor and CEO to prepare and finalise a submission to the Panel and provide feedback to WALGA, which is reflective of Council's previously resolved position, including a preparedness to consider an amalgamation as outlined in its resolutions of September 2009, August 2010, June 2011 and December 2011, and inclusive of the need to ensure that the requirements of the Poll Provisions be maintained if any proposed amalgamations are initiated by the State Government.

BACKGROUND

The Minister for Local Government, the Hon John Castrilli MLA, launched a wide-ranging local government structural reform agenda in February 2009. The three principal strategies in the reform agenda were that each local government:

1. take steps to 'voluntarily' amalgamate and form larger local governments
2. reduce the total number of elected members to between six and nine; and
3. form appropriate regional groupings of councils to assist with the efficient delivery of services.

Council advised the Minister of its intentions by way of a Reform Submission in September 2009.

The assessment of all local government reform submissions was undertaken by the Local Government Reform Steering Committee and, based on those assessments, the Committee provided advice to the Minister on preferred options for reform. Some finalised proposals were referred to the Local Government Advisory Board for consideration and recommendation. As a consequence of the reform submissions made by all local governments the Minister determined that the Town of Cottesloe should be considered as part of a Regional Transition Group (RTG) with other western suburbs local governments, and formally invited Council to become part of an RTG.

Council's resolution from September 2009, and reaffirmed in March 2010, was to conditionally support the amalgamation and RTG processes. Specifically it recommended that Council *participate in the Regional Transition Group (RTG) process with a preference to have RTG partners from within the Western Suburbs, including the Towns of Claremont, Mosman Park and Shire of Peppermint Grove, and to use the Business Plan process to explore options and opportunities that will result in increased efficiency, value and service provision for its community, as well as preserving those matters that are important to Cottesloe.*

However, as a consequence of decisions made by other Councils in relation to the Ministers request, in May 2010 Council resolved to notify the Minister that, in light of the positions adopted by The Town of Mosman Park and the Shire of Peppermint Grove, the Town of Cottesloe was unable to participate in a Regional Transition Group with suitable partners.

Council's position was also formally communicated to the Premier by the Mayor who advised the Premier that *...he had independently liaised with my fellow Mayors and Shire President in the Western Suburbs and more specifically Claremont, Mosman Park and Peppermint Grove. My view, as recently expressed to Council, is that Cottesloe has taken this matter as far as it can at present and that future local amalgamations were now contingent upon the Town of Mosman Park and Shire of Peppermint Grove voluntarily or otherwise joining the process. My recommendation to you as both Premier and local member is to unite with the Minister for Local Government and take such matters up directly with the residents and ratepayers of the relevant districts, particularly in Mosman Park and Peppermint Grove, to clearly explain the benefits to them of such a reform proposal. With a groundswell of resident support it would then be incumbent upon the elected members to respond to that community position. In my view it would also be important that any such proposal is not forced upon Councils or ratepayers.*

In August 2010, after further requests to reconsider the RTG process, Council again reaffirmed its conditional support and resolved as follows;

That Council:

1. *Note the letter from the Minister for Local Government inviting Cottesloe, Claremont, Mosman Park and Peppermint Grove*

councils to reconsider participating in a Regional Transition Group ("RTG")

2. *Reaffirm Council's willingness to join an RTG on terms as follow:*
 - (a). *Council's preference remains to join with the Towns of Claremont and Mosman Park and Shire of Peppermint Grove to form an RTG*
 - (b). *In the event that any one of the Council's does not wish to participate then the RTG be with remaining two local governments*
 - (c). *The Town not formally entering into the RTG until the Council has undertaken prior community consultation confirming support for Cottesloe to enter into the RTG.*
 - (d). *The participants in the RTG being entitled (if they so choose after stage 1) to not proceed to amalgamate and to instead adapt the Business Plan for use by a regional council.*
 - (e). *The business plan being prepared on the basis that:*
 - (i). *The Cottesloe Civic Centre, grounds and the War Memorial Town Hall, will be preserved as a community asset accessible to the general community; and*
 - (ii). *An amalgamation will not cause any forced redundancies of Council's staff.*
 - (f). *That the Minister notify the Town of Cottesloe of the quantum of state funding for any Regional Transition Group development of a Regional Business Plan prior to entering into any agreement.*
 - (g). *Request that the Minister for Local Government support and approve the boundary adjustments as resolved by Council in September 2009 as part of the RTG, to include the communities of Swanbourne in the north and North Fremantle in the south.*
 - (h). *That the Regional Transition Group agreement incorporate the scope to include a Regional Business Plan with boundary adjustments.*
 - (i). *That the Regional Transition Group agreement incorporate that election for any new local government take place prior to the commencement of the new Local Government.*

In June 2011 the Minister for Local Government announced a review of local government boundaries in the Perth metropolitan area and appointed a Panel to examine the social, economic and environmental challenges facing Perth. The Metropolitan Local Government Review Panel (Robson Panel) members are:

- Emeritus Professor Alan Robson AM CitWA, former Vice Chancellor of The University of Western Australia (Chairman)

- Dr Peter Tannock, former Vice Chancellor of the University of Notre Dame Australia
- Dr Sue van Leeuwen, Chief Executive Officer of Leadership WA.

The Metropolitan Local Government Review Panel's Terms of Reference are:

- *Identify current and anticipated specific regional, social, environmental and economic issues affecting, or likely to affect, the growth of metropolitan Perth in the next 50 years;*
- *Identify current and anticipated national and international factors likely to impact in the next 50 years;*
- *Research improved local government structures, and governance models and structures for the Perth metropolitan area, drawing on national and international experience and examining key issues relating to community representation, engagement, accountability and State imperatives among other things the Panel may identify during the course of the review;*
- *Identify new local government boundaries and a resultant reduction in the overall number of local governments to better meet the needs of the community;*
- *Prepare options to establish the most effective local government structures and governance models that take into account matters identified through the review including, but not limited to, community engagement, patterns of demographic change, regional and State growth and international factors which are likely to impact; and*
- *Present a limited list of achievable options together with a recommendation on the preferred option.*

In December 2011, in response to the MLGR panel's Issues paper, Council resolved to;

1. *Advise the Metropolitan Local Government Review Panel of its previously resolved position in relation to Local Government reform as it impacts upon the Town of Cottesloe, specifically the investigation of a Regional Transition Group type process to establish a regional council involving the Town of Cottesloe and at least two of its neighbouring councils of the Towns of Claremont and Mosman Park and Shire of Peppermint Grove and provide the following documents/reports as support for this position and for consideration by the Panel in their review;*
 - a) *Town of Cottesloe Report and Reform Submission – September 2009*
 - b) *Report to Council - September 2009*
 - c) *Report to Council - August 2010*
 - d) *Report to Council - June 2011*
 - e) *Town of Cottesloe Local Government Reform – Summary Resolutions – 2009 ~ 2011*
2. *Further advise the Metropolitan Local Government Review Panel that Council also supports the current Local Government Amendment (Regional Subsidiaries) Bill introduced to parliament by the Hon Max Trenorden MLC and currently before parliament as a preferred option for local governments to pursue models for regional resource sharing,*

service delivery and partnerships without sacrificing local identity, representation and decision making.

The Metropolitan Local Government Review Panel has now invited all stakeholders to further participate in a review of metropolitan local government boundaries by providing comment on 23 Draft Findings, which it has recently published (previously circulated). The draft findings come in response to all of the submissions made to the Panel late last year, its own research, meetings with local government representatives, two public forums and the advice of two advisory groups.

The Panel is required to submit its final recommendations to the Minister by 30 June 2012 (however it has been indicated that this may now be July 2012). The request for submissions on the Draft Findings closes on Friday 25 May, 2012.

The Draft Findings are as follows:-

- 1. Enhanced strategic thinking and leadership across the State and local government sector and the wider community will be required to manage the extraordinary growth of metropolitan Perth over the next 50 years.*
- 2. The current local government arrangements will not provide the best outcomes for the community into the future. The status quo cannot and should not remain.*
- 3. There is a need for significant change in Perth's local government, including changes in local government structures, boundaries and governance.*
- 4. The Panel envisages the outcome of the Review to be a stronger, more effective, more capable local government sector, with an enhanced role and greater authority.*
- 5. Uncertainty about the future needs to be addressed by prompt and decisive government decision making.*
- 6. A shared vision for the future of Perth should be developed by the State government, together with local government, stakeholder and community groups.*
- 7. A sense of place and local identity can be maintained through appropriate governance regardless of the size of a local government.*
- 8. The primary benefits to be achieved by the proposed reforms of Perth's local government arrangements include:*
 - a. increased strategic capacity across the local government sector;*
 - b. a more equitable spread of resources across metropolitan Perth and more equitable delivery of services to all residents.;*
 - c. reduced duplication and better use of infrastructure;*
 - d. a streamlined regulatory environment with greater transparency, simplicity, consistency, and certainty with attendant costs savings for all sectors of the community;*
 - e. potential to achieve greater economies of scale;*

- f. increased influence with State and Commonwealth governments reflected in improved funding for community projects;*
 - g. the achievement of metropolitan-wide social, economic and environmental goals.*
- 9. The structure and governance arrangements for local government in Perth cannot be considered in isolation from the role and function of local government, and from the relationship between State government and local governments.*
- 10. Some functions need to be managed from a metropolitan-wide perspective, including waste disposal and treatment, transport and planning. A shift in responsibility to the State government may be warranted.*
- 11. Consideration should be given to establishing a Local Government Commission, comprising an Independent chair and persons with significant State and local government experience, to manage the relationship between State and local government, and to oversee implementation of the reform process.*
- 12. A redefined local government would have its role enhanced including re-empowerment in local planning.*
- 13. The most appropriate options for local government in metropolitan Perth are:*
 - a. 10 to 12 councils centred on strategic activity centres*
 - b. five councils based on the central area and sub-regions.*
 - c. one single metropolitan council*
- 14. In any future model, the size of the City of Perth should be increased and its role enhanced.*
- 15. It is important to make significant change and create a new structure with robust boundaries to minimise the need for further debate and change in the short to medium term.*
- 16. Once a new structure is settled, there should be periodic boundary reviews undertaken by an independent body, to ensure the local government structure is optimal for meeting the changing needs of a growing metropolitan region.*
- 17. The creation of larger local governments alone will not address all the shortcomings of the present system.*
- 18. Local government's ability to connect to the community is an important asset. In any new local government structure for metropolitan Perth, community engagement must be strengthened, to improve accountability and reduce the power of special interest groups.*
- 19. Local government must invest in mechanisms that encourage the whole community to participate. Consideration must be given to the development of formal community engagement networks, which may include the adoption of*

new institutional arrangements and structures to ensure adequate community engagement and access to council.

20. *If the new local government structure for metropolitan Perth comprises more than one local government, a Forum or Council of Perth Mayors should be created, chaired by the Lord Mayor.*
21. *The role of elected members should be reshaped to enhance their capacity for strategic leadership and reduce their involvement in operational matters.*
22. *The potential for council controlled organisations / local government enterprises should be further considered.*
23. *Amendments to governance arrangements for local government in metropolitan Perth should include the following:*
- a. Introduction of compulsory voting at local government elections*
 - b. Recognition of the leadership role of elected members*
 - c. Election of Mayors by community*
 - d. Increased remuneration of elected members*
 - e. Training for elected members*
 - f. Clarification of the role of CEO and elected members*

STRATEGIC IMPLICATIONS

The potential strategic implications of local government reform for Council are significant. Council has recently endorsed the development of a new Community Plan in line with the Framework from the Department of Local Government however any future strategic planning and subsequent action plans will need to address the issue of local government reform.

The prior announcement by the Minister for Local Government in relation to reform strategies, the recent appointment of a Panel to undertake a metropolitan local government review and the recent release of the Panel's Draft Findings has brought into sharp focus the need for the Town to consider its position. Any significant change to existing boundaries or an amalgamation of Councils will require a complete review of all strategic and financial plans and priorities.

The reform options as proposed by the Metropolitan Local Government Reform Panel in their Draft Findings (specifically # 13) will see the end of the Town in its current form, as it would be considered a candidate for amalgamation.

POLICY IMPLICATIONS

None Known.

STATUTORY ENVIRONMENT

Local Government Act 1995 – particularly Section 2.1, Schedule 2.1 and Section 3.1 (2).

Division 1 — Districts and wards

- 2.1. *State divided into districts*

- (1) *The Governor, on the recommendation of the Minister, may make an order —*
 - (a) *declaring an area of the State to be a district;*
 - (b) *changing the boundaries of a district;*
 - I abolishing a district; or*
 - (d) *as to a combination of any of those matters.*
- (2) *Schedule 2.1 (which deals with creating, changing the boundaries of, and abolishing districts) has effect.*
- (3) *The Minister can only make a recommendation under subsection (1) if the Advisory Board has recommended under Schedule 2.1 that the order in question should be made.*

Schedule 2.1 — Provisions about creating, changing the boundaries of, and abolishing districts

[Section 2.1(2)]

DIVISION 1 — GENERAL

3.1. General function

- (1) *The general function of a local government is to provide for the good government of persons in its district.*
- (2) *The scope of the general function of a local government is to be construed in the context of its other functions under this Act or any other written law and any constraints imposed by this Act or any other written law on the performance of its functions.*
- (3) *A liberal approach is to be taken to the construction of the scope of the general function of a local government.*

Much of the current thinking on structural reform has assumed that a change to existing boundaries would see a simple reduction in the number of local governments in the metropolitan area. However any amalgamation proposal would then be open to local challenge under the poll provisions of Schedule 2.1 of the *Local Government Act 1995* (known locally as the Dadour Amendment).

The Panel has presented three radical options which would seem to demand a special Act of Parliament if any of the options is to be implemented in any purposeful way. A new Act could effectively circumvent the poll provisions without even needing to refer to them. It could simply decree what will be, without reference to the current provisions in the *Local Government Act 1995* governing the amalgamation of local governments. The *City of Perth Restructuring Act 1993* did much the same thing when the then City of Perth was split into four local governments i.e. City of Perth, Town of Cambridge, Town of Vincent and Town of Shepperton (now Victoria Park).

The State Opposition has said that there will be no forced amalgamations should they win office at the March 2013 State Election however the State Government has yet to announce its position on forced amalgamations heading into any next term of office.

There is also some speculation that the Minister will receive the Final Report of the Robson Panel in July 2012, consider it for some time, then release it in part or whole for an extended public comment period, consider any further feedback, then report it to Cabinet. Within Cabinet, the weight of other more pressing business may not see the report considered or acted upon until the run-up to the State Elections in March 2013.

Given the above it is possible that no action will be taken on any of the Final Report's recommendations until after the March 2013 State election - assuming the Liberal/National government is returned to power.

FINANCIAL IMPLICATIONS

The potential cost of any future amalgamation, boundary change or shared services arrangement has been considered in a general sense within previously commissioned reports but would require more detailed analysis and will be dependent upon specific decisions of Council and/or the Minister.

There will clearly be a cost to participate in any reform process and this will be in both time [officer resource] and direct funding.

Overall, the financial implications of change associated with local government reform have the potential to be both significant and dramatic and it is likely that either the State, or respective Councils, will need to contribute to or meet much of these costs. In the immediate term there will continue to be ongoing human resource costs to Council in responding to the Minister's reform agenda.

SUSTAINABILITY IMPLICATIONS

The final outcome in regard to the implementation of the recommendations of the Metropolitan Review Panel's recommendations as well as the Minister's reform agenda all indicate a potential impact upon Council's future sustainability objectives and plans however until decisions are made the exact impacts and implications are unknown.

CONSULTATION

Consultation has previously occurred with;

- Town of Claremont
- Town of Cambridge
- Town of Mosman Park
- City of Nedlands
- Shire of Peppermint Grove
- City of Subiaco
- WESROC
- Elected Members

The Mayor and CEO have met with other metropolitan Mayors and CEOs in various forums that have discussed a range of responses to the Draft Findings. WALGA has also published its indicative response to the Draft Findings (previously circulated) and a meeting of Mayors is proposed.

COMMUNITY CONSULTATION

Significant community consultation occurred as part of the Reform Submission stage (September 2009) including questionnaires to all residential homes and business premises throughout the Town of Cottesloe.

The Metropolitan Local Government Review Panel has established a website containing their terms of reference, all their research materials and supporting information. There have been two public forums and one local government forum held during November 2011. The Panel has also prepared an *"Issues Paper"* and a *Draft Findings Paper* and is currently seeking submissions on the Draft Findings from the Perth metropolitan community including local government. Unfortunately the timeframes in place by the Panel are unlikely to allow for such consideration other than in a relatively superficial way.

STAFF COMMENT

Whilst some rural Councils have taken the opportunity to consider amalgamation and resource sharing opportunities the only metropolitan example of the RTG process was between the Cities of Subiaco and Nedlands, which most recently and publicly ended with neither Council proceeding with any form of amalgamation or resource sharing.

It is the officer's advice that Council should continue to indicate in any submission to the Metropolitan Review Panel and the State Government that it would be prepared to consider a voluntary amalgamation process, subject to the interests of the Town of Cottesloe community not being adversely affected and there being sound, demonstrated economic and social justification for any such reform. This would be in line with existing Council resolutions. In addition Council has consistently affirmed its support for the Minister to abide by the intent of the existing Local Government Act in relation to poll provisions (schedule 2.1)

Councils have been invited to provide feedback only on the Panel's Findings as opposed to any other aspects of local government reform. The Panel has stated that it *"...is not seeking general commentary on local government, or a specific local government."*

A significant difficulty in responding to the draft findings is that none of the findings are supported with evidence that can be examined and potentially accepted, refuted or moderated. Instead we are being asked to accept the opinions of *experts* as well as the Panel itself. Interestingly, two of the six principles that have been outlined to guide the Review include *clarity* and an *evidence-based* approach. For all practical purposes, these are absent from the draft findings document. While there is clarity as to *where* the Panel wants to get to, there is limited clarity as to *why* it wants to get there.

This failing of the report to reflect, discuss and draw conclusions on the numerous submissions made to it suggests that the report is intended to foster community support for the merger of local governments on the premise that local government change is critical to the further development of the Perth metropolitan area. This ideological view represents a new twist in the amalgamation debate. Previous debates have referred to "efficiency and effectiveness" and improved "capacity and capability". Now the debate has been extended to challenging existing local governments for getting in the way of the continued and orderly development of the

Perth metropolitan area. But as the Panel points out, it is constrained from examining the State Government's role in the development of Perth.

In relation to the Draft Findings it needs to be remembered that the terms of reference required the Panel to *identify new local government boundaries and a resultant reduction in the overall number of local governments* so there should be no surprise in the findings report but perhaps less obvious was the scale that has been proposed as the Panel has recommended (in WA terms at least) very big local governments with each of its models, with average Council populations (depending upon model) in the order of 170,000 to 300,000 and, supposedly, growing over time as the Perth population increases. There are various views about what size or organization creates efficiency and/or economies of scale and when size changes from optimum to creating increased bureaucratic requirements that can *weigh down* an organization. In addition the political dimension and local representation is equally affected by size of population to serve and whilst little has been said on this aspect there has been some recent commentary about the potential *politicisation* of local governments as a consequence of the recommended changes.

The Findings Report acknowledges the principle that 'form should follow function' but then proceeds to make findings about form without any guidance on function, in other words there is no explanation of the different role local government should or could undertake that requires very big local government organisations. A number of the Findings appear to be reasonable observations, especially because they recognise the deficiency of strategic thinking and leadership from the State. However some are also vague and difficult to assess. Whilst some could and should be supported *in principle*, there is no doubt that some, like Finding 5, are already having an impact and some staff are already expressing concern about the future and the impact upon them personally. It seems clear that the Panel sees less local governments as a good thing because that is believed to make the dealings with the state government easier; which might be true, although there could be alternative measures to achieve the same result.

What is obvious (even to the Panel) is that the new mega local governments will have to devise and resource mechanisms for community engagement and community building which could be argued is exactly what is being taken away with the loss off smaller local governments.

Finding 12 is somewhat interesting given the Town's current experience with its Planning Scheme (LPS 3) and based upon that experience one cannot imagine the state government (and especially not WAPC or the Planning Department) enhancing local government's planning powers. However I can imagine local government becoming the place for any number of lesser functions and roles which the state government departments can't do well or don't want to do, with these being shifted to local government, probably, without any funding to pay for them.

Finding 13 is the core recommendation on future structure and there is no attempt in the report to explain why these are the appropriate options, making a rational assessment of them impossible. Equally WALGA is proposing 15 – 20 local governments in its draft response. This is similarly difficult to assess without rationale other than it was required to select between 3 options and this was the least objectionable, albeit not preferred by some Councils..

Cottesloe Council has previously supported small scale consolidation, initially in 2010 in a proposed merger with (all or some of) Mosman Park, Peppermint Grove and Claremont (G4). It is unclear if the opportunity to pursue such a smaller scale merger is gone (from a state government perspective) however there is significant potential for a poor outcome for the Town's residents if they are lumped into a Robson style larger option.

Finding 23 proposes, amongst other things, compulsory voting and conventional wisdom is that this will increase the likelihood of party politics taking control of local government. Coupled together with big local governments and salaried councillors this scenario seems likely. In relation to the election of the Mayor the recommendation is that the Mayor should be elected by the community not the Council. Although this is the model at Cottesloe there is no evidence to demonstrate why it should be the only option. It is not unusual for this method to be the root of difficulties in some councils, i.e. where the Mayor 'has a mandate from the electors' but is out of step with the majority of the council. There have also been previous problems with this outcome in metropolitan Perth. It is therefore important that individual Councils retain a choice in this regard.

WALGA

WALGA has drafted an initial response to the Findings Report which has been previously circulated to all elected members. Councils may make comments to WALGA for consideration in finalising its response by 15 May 2012 after which an amended report will be issued for discussion at the scheduled WALGA meeting of all metropolitan Mayors/Presidents (and CEOs as observers) on 22 May 2012. It is expected that a final WALGA submission will be adopted at this meeting. This will then be submitted direct to the Robson Inquiry by the 25 May 2012. Overall the WALGA response is encouraging and draws attention to the lack of evidence and substantiation in the Draft Findings, State responsibilities and the need to clarify any transition arrangements (including potentially significant costs) however, as mentioned above, there is at least one element of the WALGA indicative response which is likely to raise concern; its support for 15 – 20 local governments for the metropolitan area. The WALGA submission will be endorsed by State Council after it has been submitted to the Inquiry due to the tight timeframe.

WESROC

WESROC Mayors held a forum on Wednesday 2nd May to discuss the Findings Report and raised concerns that the findings are fundamentally flawed and any attempt to rectify this would most likely be ignored or dismissed as self serving as the initial input was, or help the panel rectify its inadequacies. A WESROC media response was issued after the meeting. The Mayors have asked the CEOs to look at options for a further joint response from WESROC.

The Robson Findings do not indicate clearly what would happen to the western suburbs local governments (other than they obviously must be absorbed into some form of bigger local government). The Terms of Reference for Robson requires recommendations on new boundaries are to be made in the final report. During the review process Prof. Robson is quoted as saying he believed entirely new boundaries should be drawn, rather than putting together existing local governments. However, splitting local governments will be enormously difficult with the consequential problems of responsibility for employees and Administration Centres,

distribution of assets and liabilities etc. Despite the Robson preference, it seems likely that the *easier to implement* solution would be mergers of existing local governments. The major unknown is how big the local government will be that absorbs the western suburbs.

OPTIONS

Council has a number of options in considering its response to the Draft Findings Paper from the Metropolitan Local Government Review Panel including;

1. “*Do nothing*” and not make a submission at this time and reserve its right to provide comment once the Minister has received the final report in June 2012 (assuming it is released for public comment);
2. Maintain its resolved positions from September 2009, August 2010, June 2011 and December 2011 and advise the Review Panel and the Minister that the Town is willing to join with the Towns of Claremont and Mosman Park and the Shire of Peppermint Grove (G4), inclusive of associated boundary changes;
3. Challenge the draft findings with hard evidence.
4. Debate opinion with opinion (and perhaps quote various luminaries selectively as the report has done).
5. Criticise the presentation of the findings and their lack of substance, express opinions for doing so and hope that some of it rubs off in the Final Report to the Minister.

Each of these courses of action has its downside. Any challenge to the findings by way of hard evidence is likely to be discounted or rebutted by 'evidence' from the Panel to the Minister in its Final Report of which we have little or no knowledge. Worse still, the evidence the Town provides may be turned against it in the Final Report. In addition the short timeframes leave little opportunity to respond. Debating opinion with opinion remains just that - a difference of opinion. Criticising the presentation of the findings and their lack of substance will in all likelihood be discounted by the Panel and the Minister who selected the Panel in the first instance. All existing local governments are seen by the Panel as having a vested interest in the matter.

Holding off on the debate also has an element of risk to it. There may be no further opportunity for debate if the Final Report simply disappears into State Government and comes out the other end as an Act of Parliament that restructures metropolitan local governments. "No comment" could also be misconstrued as "don't care" or worse "tacit support".

Of the above courses of action, Option 2 is recommended. Subject to further feedback from elected members a draft submission will be prepared and with the endorsement of the Mayor dispatched to the Metropolitan Local Government Review Panel.

VOTING

Simple Majority

OFFICER RECOMMENDATION**Moved Mayor Morgan, seconded Cr Hart**

THAT Council authorise the Mayor and CEO to prepare and finalise a submission to the Panel and provide feedback to WALGA, which is reflective of Council's previously resolved position, including a preparedness to consider an amalgamation with the Towns of Claremont and Mosman Park and the Shire of Peppermint Grove (plus associated boundary adjustments) and inclusive of the need to ensure that the requirements of the Poll Provisions be maintained if any proposed amalgamations are initiated by the State Government.

AMENDMENT**Moved Mayor Morgan, seconded Cr Strzina**

That a new point 2 be added to the recommendation which reads:

"That Council authorise the Mayor and CEO to write to the current Premier of Western Australia and member for Cottesloe requesting that he:

- (a) Commit to any new council proposed by the State government for the present district of Cottesloe to be no greater in size than the combined districts of Cottesloe, Claremont, Mosman Park and Peppermint Grove with possible boundary adjustments to include Swanbourne and North Fremantle**
- (b) Allow the constituents of Cottesloe to decide for themselves whether or not to proceed with any new council as may be proposed by the State Government.**
- (c) Immediately enact the Regional Subsidiaries Bill or similar to allow local government reform to now proceed".**

Carried 9/0

AMENDMENT**Moved Mayor Morgan, seconded Cr Walsh**

That a new point 3 be added to the recommendation which reads

That Council support the establishment of a metropolitan-wide authority to coordinate city-wide planning, waste and other common services, with the metropolitan-wide authority to co-exist with the retention of current local government structures.

Carried 6/3

In considering the Amended Substantive Motion the Mayor dealt with items 1 and 2 first, followed by item 3.

THAT Council;

- 1. Authorise the Mayor and CEO to prepare and finalise a submission to the Panel and provide feedback to WALGA, which is reflective of Council's previously resolved position, including a preparedness to consider an amalgamation with the Towns of Claremont and Mosman Park and the Shire of Peppermint Grove (plus associated boundary adjustments) and inclusive of the need to ensure that the requirements of the Poll Provisions be maintained if any proposed amalgamations are initiated by the State Government.**
- 2. Authorise the Mayor and CEO to write to the current Premier of WA and member for Cottesloe requesting that he:**
 - (a) Commit to any new council proposed by the State government for the present district of Cottesloe to be no greater in size than the combined districts of Cottesloe, Claremont, Mosman Park and Peppermint Grove with possible boundary adjustments to include Swanbourne and North Fremantle**
 - (b) Allow the constituents of Cottesloe to decide for themselves whether or not to proceed with any new council as may be proposed by the State Government.**
 - (c) Immediately enact the Regional Subsidiaries Bill or similar to allow local government reform to now proceed**

Carried 9/0

THE AMENDED SUBSTANTIVE MOTION WAS PUT

THAT Council;

- 3. Support the establishment of a metropolitan-wide authority to coordinate city-wide planning, waste and other common services, with the metropolitan-wide authority to co-exist with the retention of current local government structures.**

Carried 8/1

THE AMENDED SUBSTANTIVE MOTION WAS PUT

COUNCIL RESOLUTION**THAT Council;**

- 1. Authorise the Mayor and CEO to prepare and finalise a submission to the Panel and provide feedback to WALGA, which is reflective of Council's previously resolved position, including a preparedness to consider an amalgamation with the Towns of Claremont and Mosman Park and the Shire of Peppermint Grove (plus associated boundary adjustments) and inclusive of the need to ensure that the requirements of the Poll Provisions be maintained if any proposed amalgamations are initiated by the State Government.**
- 2. Authorise the Mayor and CEO to write to the current Premier of WA and member for Cottesloe requesting that he:**
 - (a) Commit to any new council proposed by the State government for the present district of Cottesloe to be no greater in size than the combined districts of Cottesloe, Claremont, Mosman Park and Peppermint Grove with possible boundary adjustments to include Swanbourne and North Fremantle**
 - (b) Allow the constituents of Cottesloe to decide for themselves whether or not to proceed with any new council as may be proposed by the State Government.**
 - (c) Immediately enact the Regional Subsidiaries Bill or similar to allow local government reform to now proceed**
- 3. Support the establishment of a metropolitan-wide authority to coordinate city-wide planning, waste and other common services, with the metropolitan-wide authority to co-exist with the retention of current local government structures.**

12 MEETING CLOSURE

The Mayor announced the closure of the meeting at 9:15 PM

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PRESIDING MEMBER:

POSITION:

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DATE: / /